

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

ORIGINAL DATE 2/14/2007

SPONSOR HJC LAST UPDATED \_\_\_\_\_ HB 127/HJCS

SHORT TITLE Gift Certificate Sale and Redemption Regulation SB \_\_\_\_\_

ANALYST Schuss

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

### SUMMARY

#### Synopsis of Bill

The House Judiciary Committee substitute for House Bill 127 regulates the sale and redemption of gift certificates, establishes penalties and amends a section of the unclaimed property act. Gift certificate, in this section, means writing identified as a gift certificate that is not redeemable in cash and is usable in its face amount in lieu of cash in exchange for goods or services supplied by a seller, but does not include a gift certificate useable with multiple unaffiliated sellers or goods or services. "Gift certificate" includes an electronic card with a banked dollar value, a merchandise credit, a certificate where the issuer has received payment for the full face value for the future purchase or delivery of goods or services and any other medium that evidences the giving of consideration in exchange for the right to redeem the certificate, electronic card or other medium for goods or services of at least an equal value.

### FISCAL IMPLICATIONS

The Attorney General's Office states that the bill requires the Attorney General to investigate and prosecute all violations of this act, but provides no appropriation for additional staff, which may impact the agency's other performance based budget targets

## **SIGNIFICANT ISSUES**

House Bill 127 restricts an issuer of a gift certificate to a minimum expiration period of 60 months after the date the gift certificate was issued. The bill states that the expiration date must be conspicuously placed on the gift certificate or it is presumed to have no expiration period. The bill prohibits the issuer from charging fees of any kind in relation to the sale, redemption or replacement of the gift certificate other than an initial charge not to exceed the face value of the gift certificate. The gift certificate may not be reduced in value by any fee, including a service or dormancy fee.

A violation of this section will constitute an unfair or deceptive trade practice and shall be subject to the penalties set forth in the Unfair Trade Practices

HB 127 states that “gift certificate” does not include the following:

- gift certificates, store gift cards or general use prepaid cards distributed to a consumer for promotional, award, incentive, rebate or other similar purposes without money or something of value being given by the consumer in exchange for the certificate or card
- gift certificates, store gift cards or general use prepaid cards that are sold below face value or at a volume discount to employers or to nonprofit and charitable organizations for fund-raising purposes
- written promises, plastic cards or other electronic devices that are used solely for telephone services; or are associated with a banking institution for debiting purposes
- gift certificates issued by banks, savings and loan associations, licensed money transmitters or credit unions operating pursuant to the laws of the United states or New Mexico

HB 127 amends Section 7-8A-2 NMSA 1978 (Presumptions of Abandonment) to state that a gift certificate is presumed abandoned five years after December 31 of the year in which the certificate was sold, but if redeemable in merchandise only, the amount abandoned is deemed to be sixty percent of the certificate's face value.

## **OTHER SUBSTANTIVE ISSUES**

The Attorney General’s Office offers the following background information:

According to UnclaimedAssets.com in 2005 from 3 to 5 percent of gift cards, a total of \$2.75 billion worth or more, are never redeemed and more recently (2006) consumers spent \$73 billion on gift cards of which approximately 5-10 percent—worth between \$3.65 and \$7.3 billion are never redeemed. A 2005 Bankrate study showed that the denomination ranged from \$5 to \$5,000. Bankrate data showed that the average person spent about \$44 per gift card.

Gift Certificates/Gift Cards issuers range from hitting the buyer with purchase fees, activation fees and shipping fees, while the user can be hit again with inactivity fees or redemption fees. Gift Certificates/Gift Cards expiration periods range from six months to five years while activation period fees range from 12 to 24 months.